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09/818,023	03/27/2001	Michael D. Zoeckler	7137 CIP1	2875

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EXAMINER

HARMON, CHRISTOPHER R

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3721


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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 19

Application Number: 09/818,023
Filing Date: March 27, 2001
Appellant(s): ZOECKLER, MICHAEL D.

D. Scott Sudderth
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/3/03.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-15 and 33-37 are grouped together (and therefore stand or fall together) and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

4,733,916	Seufert	3-1988
4,064,206	Seufert	12-1977
3,735,674	Haddock	5-1973

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, 11, and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell et al. (US 1,600,396) in view of Seufert (US 4,733,916).

Campbell et al. disclose a method of reinforcing paperboard made of paper from rolls 1, 2, and 3. Reinforcing tapes 8 are applied. The blanks are scored by scoring rolls (not shown).

Campbell does not directly disclose scoring fold lines with a section of the transverse fold line wider than another section, however Seufert teaches a method of making a reinforced paperboard container with a reinforcing material 3 with a width less than that of paperboard 1. The reinforcing material 3 is glued to the paperboard 1 and then the blank is scored with fold lines 12, 13. Fold line 13 has a wider section 17 with a transition zone in between; see figures 1 and 3.

It would have been obvious to one of ordinary skill in the art at the time of the invention to include the teachings of Seufert in the invention of Campbell in order to compensate stresses in the laminate materials when folded into the final product and thereby maintaining the bond between the laminates.

Regarding the impression cylinders of claims 34-37, Campbell discloses impression cylinders 6 and scoring and cutting rolls not shown (column 2, lines 12-14) one of which performs score 12 (figure 2).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell et al. (US 1,600,396) in view of Seufert (US 4,733,916) as applied to claims 1-5, 7, 11, and 33-37 above, and further in view of Seufert (US 4,064,206).

The modified invention to Campbell et al. does not disclose the use of a platen die, however in Seufert '916 the process of scoring bend lines 13 is performed simultaneously with the impression of wider section 17 as incorporated by DE 2541324 (see column 8, lines 22-41). The US equivalent to DE 2541324 is US 4,064,206. Seufert describes in '206 the utilization of platen die 20 for forming the bend lines 13; see figure 1. Rotary dies and platen dies are well known substitutes for performing scoring procedures and because Seufert '916 incorporates the description of '206 it would have been obvious to one of ordinary skill in the art to use the platen die structure of Seufert in the invention of Campbell as a substitute for the rotary die.

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Claims 8-10 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell in view of Seufert as applied to claims 1-5, 7, 11, and 33-37 above, and further in view of Haddock (US 3,735,674).

The modified invention to Campbell does not directly disclose a counter plate with grooves, however this feature is well known in the scoring/folding art as is shown by Haddock; groove 16 in counterplate 14 (see figure 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include a counterplate with a groove as is recognized by Haddock in the modified invention to Campbell in order to create fold lines in the material.

(11) Response to Argument

Appellant's arguments filed 11/3/03 have been fully considered but they are not persuasive.

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Campbell et al. recognize the difficulties of maintaining bonds between reinforcing laminates and their paperboard counterparts due to stresses applied during folding along score lines upon erecting the finished receptacles; see page 1, lines 67-80. The teachings of Seufert are

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directly related to this problem and are used to overcome any interference between laminates in laminated web materials. Seufert indicates application of his invention to "all types of folding boxes and other foldable packaging units"; column 6, lines 38-39.

In response to appellant's argument that Seufert is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the window laminate would inherently act as a reinforcing member due to the added strength provided by the structural properties of the web.

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir.


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1986). The teachings of Seufert applied in the invention of Campbell would not distract from the invention of Campbell. Fold lines and the transition zone are simultaneously produced by Seufert (see column 2, lines 65-66) therefore could be directly incorporated into the scoring procedure in the invention to Campbell. For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

Chris Harmon
November 26, 2003

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